Qawaid Fiqhiyyah (Islamic Legal Maxims) - A Quick Primer

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Al-Qawa'id al-Fiqhiyyah

Al-qawa'id : plural of *al-qa'idah* = principles

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Fiqh : Islamic law

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Basic Definition : Principles of Islamic law

Usul al-fiqh and Qawa'id fiqhiyyah
The differences

Usul al-fiqh

- Methodology of legal reasoning
- Derive legal rulings from primary sources of Shariah
- The reading of sources in an honest and unbiased manner to infer the intentions of Allah (s.w.t)
- *"Rules of interpretation, meaning and implication of commands and prohibitions . And so forth."* – M.H. Kamali, IIUM

Qawa'id fiqhiyyah

- A maxim is defined as *"a general rule which applies to all of its related particulars"* – The Philosophy of Jurisprudence in Islam (1993, Eng. trans.)
- Principles derived from consolidated reading on various rules of *fiqh* regarding various themes
- Short, epithetical expressions of Shariah goals and objectives

Al-qawa'id al-fiqhiyyah al-asliyyah (The Normative Maxims)

"Al-umuru bi-maqasidiha"	• Acts are judged by the intention behind them
"Ad-dararu yuzal"	• Harm must be eliminated
"Al-yaqinu la yazulu bish-shakk"	• Certainty is not overruled by doubt
"Al-'addatu muhakkamatun"	• Custom is the basis of judgement
"Al-mashaqqatu tujlab at-taysir"	• Hardship begets facility

"Al-umuru bi-maqasidiha"
Acts are judged by the intention behind them

- This maxim is about 'claim and practice', where Muslims are required to demonstrate consistency in faith and practice, and in words and deeds.
- It embodies the relationship between intention and deed; claims and acts.
- It is about how legality and illegality is determined through intention and deed.
- For example : A man makes an earning for (a) the satisfaction of his selfish urges; (b) personal consumption and demonstration effects; or (c) complying with the divine command to earn for the sake of survival and spending on noble causes. The act of earning may be the same, but the intention behind the act itself determines its standing.

“Ad-dararu yuzal”
Harm must be eliminated

- M.H. Kamali “ ....the maxim....is the validation of the option of defect in Islamic law, which is designed to protect the buyer against harm.”
- This maxim is treated as a ‘pillar’ of Islamic law – established laws of option, inhibition, return of defective merchandise, pre-emption, requital, Hudud, compensation and indemnity, etc....
- The following are prerequisites to the application of the maxim :

- “Let the ancient rest on its age”
- “ A wrong is a wrong even though it be ancient”
- “Unlawful things are to be prevented irrespective of benefit”
- For more on this maxim, please visit http://www.islamic-world.net/economics/economic_revelance_02.htm

"Al-yaqinu la yazulu bish-shakk"
Certainty is not overruled by doubt

- In other words : "Innocent until proven guilty"
- Supplemented by various other maxims to give clearer scope and meaning
- Although mainly used in relation to principally criminal matters, in general this maxim really means that one cannot be deemed liable until proven
- Any guilt attributed to any person must be treated as doubtful until proof is given to lift the doubt and create certainty – "Certainty can, in other words, only be overruled by certainty, not by doubt." M.H. Kamali
- Example : A firm which declares a certain amount of income during the year – this must be accepted by the income tax authorities in the absence of contradicting evidence.

"Al-'addatu muhakkamatun"
Custom is the basis of judgement

- Based on a statement made by the Companion, Abdullah ibn Mas'ud, "...what the Muslims deem to be good is good in the eyes of Allah"
- Certain instances may not be accounted/prescribed for in texts – the courts are authorised accordingly to rule on matters based on customary practices
- These customary rules may be allowable provided that they are no in conflict with the Shariah, current and used predominantly by people.
- For example : In a certain town, it may be customary for the seller to include a local gift to the buyer as a way of thanking the buyer for his/her custom (←not the same meaning as 'custom' above).

"Al-mashaqqatu tujlab at-taysir"
Hardship begets facility

- This is a rule of relaxation in terms of difficulty or hardship; but it must not be assumed that this rule can so easily be invoked as there are conditions that must be fulfilled.
- For instance : It may be permissible for a Muslim to eat pork when in an emaciated state, provided that pork is the ONLY viable source of sustenance left → only enough may be consumed to ensure survival
- There are various forms of relaxation, for example : Suqut (relaxation); decrease (tangis); Advancing (taqdim); Postponement (ta'khir); and Permission (tarkhis)
- For clearer understanding of this maxim, please visit http://www.islamic-world.net/economics/economic_revelance_02.htm

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Please refer to your textbooks and other further reading materials in order to gain deeper understanding.

Thank you.